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2
3 UNITED STATES DISTRICT COURT
4 DISTRICT OF NEVADA

5 * * *

6 Lloyd Lacambacal,

7 Plaintiff,

8 v.

9 Desteney Vasquez; Fernando; Q Automotive,

10 Defendants.

Case No. 2:24-cv-01759-GMN-DJA

Order

11 Under 28 U.S.C. § 1915 Plaintiff is proceeding in this action *pro se* and has requested
12 authority to proceed *in forma pauperis*. (ECF No. 1). Plaintiff also submitted a complaint. (ECF
13 No. 1-1). Because the Court finds that Plaintiff's application is complete, it grants the application
14 to proceed *in forma pauperis*. However, because the Court finds that Plaintiff's complaint does
15 not properly assert a basis for this Court's jurisdiction, it dismisses the complaint with leave to
16 amend.

17 **I. *In forma pauperis* application.**

18 Plaintiff filed the affidavit required by § 1915(a). (ECF No. 1). Plaintiff has shown an
19 inability to prepay fees and costs or give security for them. Accordingly, the request to proceed
20 *in forma pauperis* will be granted under 28 U.S.C. § 1915(a). The Court will now review
21 Plaintiff's complaint.

22 **II. Legal standard for screening.**

23 Upon granting an application to proceed *in forma pauperis*, courts additionally screen the
24 complaint under § 1915(e). Federal courts are given the authority to dismiss a case if the action is
25 legally "frivolous or malicious," fails to state a claim upon which relief may be granted, or seeks
26 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2).
27 When a court dismisses a complaint under § 1915, the plaintiff should be given leave to amend
28 the complaint with directions as to curing its deficiencies, unless it is clear from the face of the

1 complaint that the deficiencies could not be cured by amendment. *See Cato v. United States*, 70
2 F.3d 1103, 1106 (9th Cir. 1995).

3 Rule 12(b)(6) of the Federal Rules of Civil Procedure provides for dismissal of a
4 complaint for failure to state a claim upon which relief can be granted. Review under Rule
5 12(b)(6) is essentially a ruling on a question of law. *See Chappel v. Lab. Corp. of Am.*, 232 F.3d
6 719, 723 (9th Cir. 2000). A properly pled complaint must provide a short and plain statement of
7 the claim showing that the pleader is entitled to relief. Fed. R. Civ. P. 8(a)(2); *Bell Atlantic Corp.*
8 *v. Twombly*, 550 U.S. 544, 555 (2007). Although Rule 8 does not require detailed factual
9 allegations, it demands “more than labels and conclusions” or a “formulaic recitation of the
10 elements of a cause of action.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Papasan v.*
11 *Allain*, 478 U.S. 265, 286 (1986)). The court must accept as true all well-pled factual allegations
12 contained in the complaint, but the same requirement does not apply to legal conclusions. *Iqbal*,
13 556 U.S. at 679. Mere recitals of the elements of a cause of action, supported only by conclusory
14 allegations, do not suffice. *Id.* at 678. Where the claims in the complaint have not crossed the
15 line from conceivable to plausible, the complaint should be dismissed. *Twombly*, 550 U.S. at 570.
16 Allegations of a *pro se* complaint are held to less stringent standards than formal pleadings
17 drafted by lawyers. *Hebbe v. Pliler*, 627 F.3d 338, 342 & n.7 (9th Cir. 2010) (finding that liberal
18 construction of *pro se* pleadings is required after *Twombly* and *Iqbal*).

19 Federal courts are courts of limited jurisdiction and possess only that power authorized by
20 the Constitution and statute. *See Rasul v. Bush*, 542 U.S. 466, 489 (2004). Under 28 U.S.C.
21 § 1331, federal courts have original jurisdiction over “all civil actions arising under the
22 Constitution, laws, or treaties of the United States.” Cases “arise under” federal law either when
23 federal law creates the cause of action or where the vindication of a right under state law
24 necessarily turns on the construction of federal law. *Republican Party of Guam v. Gutierrez*, 277
25 F.3d 1086, 1088-89 (9th Cir. 2002). Whether federal-question jurisdiction exists is based on the
26 “well-pleaded complaint rule,” which provides that “federal jurisdiction exists only when a
27 federal question is presented on the face of the plaintiff’s properly pleaded complaint.”
28 *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392 (1987). Under 28 U.S.C. § 1332(a), federal

1 district courts have original jurisdiction over civil actions in diversity cases “where the matter in
 2 controversy exceeds the sum or value of \$75,000” and where the matter is between “citizens of
 3 different states.” Generally speaking, diversity jurisdiction exists only where there is “complete
 4 diversity” among the parties; each of the plaintiffs must be a citizen of a different state than each
 5 of the defendants. *Caterpillar Inc. v. Lewis*, 519 U.S. 61, 68 (1996).

6 **III. Screening the complaint.**

7 Plaintiff sues Desteney Vasquez, who he asserts is the owner of Q Automotive and is
 8 doing business as Q Automotive; and Fernando, the Q Automotive shop manager. (ECF No. 1-1
 9 at 2-3). Plaintiff lists both Vasquez and Fernando as being residents of Nevada and, based on his
 10 allegations, Q Automotive is also based in Nevada. (*Id.*). Plaintiff’s allegations arise out of his
 11 agreement with Q Automotive for work on Plaintiff’s car. (*Id.* at 3-6). Plaintiff alleges that Q
 12 Automotive continually stalled in performing the work, did not perform the work to which the
 13 parties agreed, and physically blocked Plaintiff’s attempts to tow his car from the lot. (*Id.*).

14 Plaintiff alleges that this Court has federal question jurisdiction over his claims and lists
 15 the Federal Trade Commission Act as the federal law involved. (*Id.* at 1). However, the Federal
 16 Trade Commission Act does not provide a private right of action, instead, initial remedial power
 17 lies with the Commission itself. *Fisher v. Coca-Cola Bottling Co. of Los Angeles*, No. cv 78-
 18 0479-F, 1979 WL 1597 (C.D. Cal. Mar. 12, 1979) (citing *Carlson v. Coca-Cola Company*, 483
 19 F.2d 279, 280 (9th Cir. 1973)). And Plaintiff does not otherwise identify any federal claims.
 20 Instead, he brings his single claim under the Nevada Deceptive Trade Practices Act, a state—not
 21 a federal—law. (ECF No. 1-1 at 6). He also appears to potentially raise a breach of contract
 22 claim, which also arises under state law.

23 Because Plaintiff has not identified a federal law under which his claims arise, he has not
 24 established this Court’s federal question jurisdiction over his case. *See* 28 U.S.C. § 1331. The
 25 Court also lacks diversity jurisdiction over his case because he has not alleged that the matter in
 26 controversy exceeds \$75,000 and the matter is between citizens of different states. *See* 28 U.S.C.
 27 § 1332(a). The Court thus lacks jurisdiction to hear Plaintiff’s case and dismisses it without
 28 prejudice and with leave to amend. Plaintiff must allege the basis for this Court’s jurisdiction in

1 any amended complaint. If he cannot, while Plaintiff may be able to bring his claims in state
2 court, this Court will not be able to hear his claims.

3
4 **IT IS THEREFORE ORDERED** that Plaintiff's application to proceed *in forma*
5 *pauperis* (ECF No. 1) is **granted**. Plaintiff shall not be required to pre-pay the filing fee.
6 Plaintiff is permitted to maintain this action to conclusion without the necessity of prepayment of
7 any additional fees or costs or the giving of a security therefor. This order granting leave to
8 proceed *in forma pauperis* shall not extend to the issuance and/or service of subpoenas at
9 government expense.

10 **IT IS FURTHER ORDERED** that the Clerk of Court is kindly directed to file Plaintiff's
11 complaint (ECF No. 1-1) on the docket but shall not issue summons. The Clerk of Court is
12 kindly directed to send Plaintiff a copy of this order.

13 **IT IS FURTHER ORDERED** that the complaint (ECF No. 1-1) is **dismissed without**
14 **prejudice** for failure to state a claim upon which relief can be granted, with leave to amend.
15 Plaintiff will have until **October 30, 2024**, to file an amended complaint if the noted deficiencies
16 can be corrected. If Plaintiff chooses to amend the complaint, Plaintiff is informed that the Court
17 cannot refer to a prior pleading (i.e., the original complaint) to make the amended complaint
18 complete. This is because, generally, an amended complaint supersedes the original complaint.
19 Local Rule 15-1(a) requires that an amended complaint be complete without reference to any
20 prior pleading. Once a plaintiff files an amended complaint, the original complaint no longer
21 serves any function in the case. Therefore, in an amended complaint, as in an original complaint,
22 each claim and the involvement of each Defendant must be sufficiently alleged. **Failure to**
23 **comply with this order will result in the recommended dismissal of this case.**

24
25 DATED: September 30, 2024

26 
27 DANIEL J. ALBRECHTS
28 UNITED STATES MAGISTRATE JUDGE